

THE INDUSTRIAL COURT

**THE TRADE UNION AND LABOUR RELATIONS (NORTHERN IRELAND)
ORDER 1995 (AS INSERTED BY ARTICLE 3 OF THE EMPLOYMENT
RELATIONS (NORTHERN IRELAND) ORDER 1999)**

SCHEDULE 1A – COLLECTIVE BARGAINING: RECOGNITION

DECISION ON WHETHER TO ACCEPT THE APPLICATION

The Parties:

Unite the Union

And

Kestrel Foods Ltd

Background

1. The Industrial Court (the Court) received an application on 13th March 2018 for recognition at Kestrel Foods Ltd, Unit 8, Carn Drive, Carn Industrial Estate, Portadown, BT63 5WJ. This address is the location of the proposed bargaining unit. The bargaining unit was described as “Production Operatives” working for Kestrel Foods Ltd at their Portadown site: Unit 8, Carn Drive, Carn Industrial Estate, Portadown, Co. Armagh, BT63 5WJ.

2. A Panel was established and was made up of Barry Fitzpatrick, Acting Chairman of the Industrial Court and Robin Bell and Patrick Masterson as Panel Members. The Case Manager appointed was Declan McGrady. The application was copied to the Employer, the Employer Response Form was issued to the Employer on 14th March 2018 and was returned from the Employer on 23rd March 2018.

Panel Meeting of 27th March 2018

3. A Panel Meeting to review the application took place on 27th March 2018. The Panel confirmed with the Case Manager that a range of admissibility and validity tests, set out in the Schedule, had been satisfied. The Panel noted that the description of the proposed bargaining unit in the request for recognition included the location of the bargaining unit but that this inclusion did not alter the description of the workers in the unit. The outstanding issues concerned the admissibility tests set out in paragraph 36 of the Schedule, which provides:-

“(1) An application under paragraph 11 or 12 is not admissible unless the Court decides that—

(a) members of the union (or unions) constitute at least 10 per cent of the workers constituting the relevant bargaining unit, and

(b) a majority of the workers constituting the relevant bargaining unit would be likely to favour recognition of the union (or unions) as entitled to conduct collective bargaining on behalf of the bargaining unit.”

In consequence, the Case Manager was invited to collate further information from the Parties.

Information provided by the Parties

On 28th March 2018, the Union provided a membership list containing 26 names with membership numbers and details of dues paid and date last paid, a list of names, addresses and understood job titles for those within the proposed bargaining unit. On Thursday 5th April 2018, the Employer provided a response to the Court with a list of 59 workers including names, addresses and job titles.

4. A Case Manager’s Report issued on 10th April 2018 and comments were requested from the Parties.

5. The following table was included in the Case Manager’s Report.

Number of workers on the list supplied by the Employer	59
Number of Union Members on list supplied by the Union	26
Number of Union Members with dues paid on list provided	26
Number of Union members whose names match those provided by the Employer	26
Number of Union members whose names match but addresses do not	0
Number of Union Members appearing on the Employer list with no match issues	26 (44.07%)
No petition of support was provided by the Union	-
Number of workers who would be likely to favour recognition of the Union	26 (44.07%)

6. The Union responded to the Case Manager’s Report on 13th April 2018 stating – “At this point in time we have nothing further to add”. The Employer response, also received on 13th April 2018, made reference to an Employee Forum, low staff turnover, the company’s pay structure and an overview of employee practices. Evidence was also provided by the Employer in the form of Employee Forum Minutes.

7. The Panel met again on 16th April 2018. The Panel considered the Case Manager’s Report. It considered the ‘membership/’majority likely to’ tests in paragraph 36 of the Schedule. The Panel noted that the Union had not provided a petition or other evidence of

support for recognition beyond its existing membership. The Panel also noted that there was a degree of uncertainty over which workers constituted the proposed bargaining unit. In particular, there was a discrepancy between the number of workers perceived to be in the proposed bargaining unit by each Party. There was also a discrepancy between the job titles provided by the Employer and the Union.

8. The membership test is a concrete one and was clearly satisfied but the ‘majority likely to’ test is, by definition, a hypothetical one. In these circumstances, the check had provided evidence of support which fell short of the majority required. The Panel considered a previous Decision in IC 72, SIPTU & Debenhams plc. In that case, at the acceptance stage, there were 63 Union members out of 170 workers in the proposed bargaining unit, amounting to 37.06% of the unit. A further 19 workers had indicated their support for collective bargaining making a total of 82 workers supporting collective bargaining, amounting to 48.78% of the unit.

9. In that case, the Court made reference to a well-established principle in the case law of the Central Arbitration Committee, set out in UNISON & Woodbridge Practice (Case Number TUR1/922/2015) in which the CAC Panel concluded:

“24. The check undertaken by the Case Manager shows 44% of the bargaining unit are Union members. They are likely to support recognition for collective bargaining. It would require another three people to be in support of recognition for there to be majority support in the bargaining unit. It is not uncommon in cases before the CAC for there to be people who while not currently members of the Union would nonetheless be supportive of recognition. Although this may prove not to be the case in any subsequent ballot the Panel’s experience is that it is likely. Taking full account of the evidence before us we are satisfied that, on balance, and in the absence of any evidence to the contrary, a majority of the workers in the bargaining unit would be likely to support recognition of the Union and the test set out in paragraph 36(1)(b) is therefore met.”

10. In the Debenhams application, it would have required four more workers to support recognition for collective bargaining. The Panel decided to apply the Woodbridge Practice principle and concluded that the application should be accepted.

11. In this application, the percentage of evidenced support for recognition stands at 44% and the additional number of workers required to establish majority support is four. The Panel was also aware of the discrepancy between the Union’s understanding of the number of workers in the proposed bargaining unit, namely 42 workers, and the Employer’s understanding, namely 56 workers. This discrepancy adds a further element to the issue of whether it might be assumed that a further four workers would be supportive of recognition. The Panel also noted that the Employer, in its response to the Case Manager’s Report, dated 13th April 2018, claimed that there was a lack of understanding amongst its workers over the Union’s application and that “[i]f a ballot was held, we believe that would reflect this.”

12. The Panel decided, given the particular circumstances of this application, and based on its industrial relations experience, that it was appropriate to conclude that a majority of the workers constituting the proposed bargaining unit would be likely to favour recognition of the Union.

DECISION

13. For these reasons, the Industrial Court has decided that:

- a. members of the Union constitute at least 10% of the workers constituting the proposed bargaining unit;
- b. a majority of workers constituting the proposed bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit; and
- c. the application meets the remaining admissibility and validity criteria.

14. The Industrial Court's decision is therefore that the application is accepted.

Barry Fitzpatrick

Mr Barry Fitzpatrick
Mr Robin Bell
Mr Pat Masterson

Decision Date:	16 th April 2018
Date Issued to Parties:	2 nd May 2018